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ZACHARIAH JUDSON RUTLEDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

* * * * *

ZACHARIAH JUDSON RUTLEDGE,

Plaintiff,

vs.

COUNTY OF SONOMA, MICHAEL
POTTS, RUSSEL L. DAVIDSON,
JAMES PATRICK CASEY, CHRISTINE
M. COOK, BEAU R. MARTIN,
J. MICHAEL MULLINS, STEPHAN R.
PASSALACQUA, GREG JACOBS,
SONOMA COUNTY SHERIFF'S
DEPARTMENT, SONOMA COUNTY
DISTRICT ATTORNEY'S OFFICE,
and DOES 1 through 40.

Defendants.

CASE NO.: CV 07-04274 CW

**PLAINTIFF'S
THIRD REQUEST
FOR JUDICIAL NOTICE
IN SUPPORT OF OPPOSITION
TO DEFENDANTS' SECOND
MOTION TO DISMISS**

Date: September 16, 2008
Time: 2:00 p.m.
Courtroom: 2 (4th Floor)
Judge: Hon. Claudia Wilken

COMES NOW Plaintiff, Zachariah Rutledge, and respectfully requests that the Court take judicial notice, pursuant to Rules 201 and 302 of the Federal Rules of Evidence, of the following documents:

Exhibit 10 - June 14, 2004, Ruling on 2nd Nonstatutory Motion to Dismiss

Exhibit 11 - Official Job description of "Criminalist;" California State Personnel Board, <http://www.dpa.ca.gov/textdocs/specs/s8/s8466.txt>.

State of California Courts take judicial notice of this document under California Evidence Code § 452(c) regarding official acts of a legislative/executive department of a state. Further, State of California Courts may take judicial notice of this document under California Evidence Code § 452(h) in that it provides facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Dated: August 26, 2008

Respectfully submitted,

-----/s/-----

Editte Lerman
Attorney for Plaintiff
Zachariah Rutledge

DECLARATION OF SERVICE

I, Editte D. Lerman, declare as follows:

I am a resident of the State of California, residing or employed in Mendocino, California.
I am over the age of 18 years and am not a party to the above-entitled action. My business address is 45060 Ukiah Street P.O. Box 802, Mendocino C.A. 95460.

On August 26, 2008,

PLAINTIFF'S THIRD REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO DEFENDANTS' SECOND MOTION TO DISMISS

was filed and served upon the following parties via the Court's PACER-ECF electronic filing system.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 26th day of August, 2008, at Mendocino, California.

-----/s/-----

Edite Lerman

Exhibit 10

COPY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

HONORABLE RAIMA BALLINGER, JUDGE

. . . .

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

v.)

ZACHARIAH RUTLEDGE,)

Defendant.)

Case No. SCR-32528
Date: June 14, 2004
Time: 1:30 p.m.
Courtroom: 2

REPORTER'S TRANSCRIPT OF
RULING ON NONSTATUTORY MOTION TO DISMISS

A P P E A R A N C E S

For the People:

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District Attorney
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By: CHRISTINE COOK, ESQ.
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Certified Shorthand Reporter
600 Administration Drive, Room 218-J
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Monday, June 14, 2004

. . . .

THE COURT: Court's on the record in People versus Rutledge. Mr. Rutledge is present in custody with Mr. Nick. Ms. Cook and Mr. Jacobs for the People.

We are on calendar today for this Court to rule on several motions upon which we've had testimony over the last months. However, there is only one ruling that the Court is going to make today, which is a ruling with respect to the nonstatutory 995 motion which Mr. Nick made previously and which this Court now is reconsidering, as well as his oral motion made a couple of weeks ago in the midst of some testimony actually on another motion.

With respect to holding orders, I'm going to be quoting some cases on all of these various issues, and I'm going to take my time for the benefit of the court reporter.

The Court is now quoting a case People vs. Encerti, E-N-C-E-R-T-I, 130 Cal.App.3d 791. Quote:

"The evidences necessary to support a commitment to the trial court is a state of facts that would lead a person of ordinary caution and prudence to believe and conscientiously attain a strong suspicion of the guilt of the accused."

The Court is now quoting from People vs. Johnson, 26 Cal.3d 557 at page 577.

"When reviewing the sufficiency of the evidence, the Court also has the duty to resolve the issue in light of the whole record and may not limit

1 its appraisal to isolated bits of evidence selected by
2 the prosecution."

3 With respect to a nonstatutory 995, the Court is going
4 to quote the Merrill court.

5 **MR. NICK:** Did the Court mean a nonstatutory 995?

6 **THE COURT:** Nonstatutory 995 if that's not what I said.

7 The Court will quote the Merrill court cited at 27
8 Cal.App.4th 1586 at page 1596. Quote:

9 "In contrast, the nonstatutory motion to
10 dismiss is the appropriate vehicle for redress of an
11 error not known or visible at the hearing itself."

12 And, again, the same page:

13 "In other words, you can't ascertain the
14 problem," and I'm stating that in this case, problems,
15 "from the preliminary hearing transcript itself,
16 therefore, the nonstatutory motion to dismiss was
17 properly filed in this case."

18 With respect to whether or not a second one can be
19 filed, the Court quotes the Sherwin case at 82 Cal.App.4th 1404
20 at page 1411 which says that:

21 "A second 995 motion may be justified by
22 changed circumstances or newly discovered information,"
23 which is what this Court has found here.

24 I want to go over some definitions which I think are
25 helpful to people listening to what the Court is saying and who
26 may not be lawyers.

27 "Exculpatory" and "material" means:

28 "Evidence that has a reasonable probability

1 of changing the outcome used by the defense."

2 And that's Brady language.

3 "Favorable to the defense" is:

4 "Evidence that the defendant could either use
5 to impeach the state's witnesses or exculpate the
6 accused."

7 That's also cited in People vs. Orland at 13 Cal.4th
8 1962.

9 "Material" is:

10 "Evidence is material if there is a
11 reasonable probability that the result of the
12 proceeding would have been different had the evidence
13 been disclosed to the defendant."

14 A reasonable probability is one sufficient to, quote:

15 "Undermine confidence in the outcome."

16 And that comes from US vs. Bagley, 473 US 667 at page
17 678.

18 I'm going to talk a few minutes now about the discovery
19 problems that became exceedingly apparent to the Court.

20 First, Ande Thomas, the public defender who represented
21 defendant at the preliminary hearing, prior to the preliminary
22 hearing informally asked for production of lab analysis on the
23 knife and on other -- well, the wallboard. I think there was a
24 window frame. He asked for, as he stated, paint evidence. He
25 also testified that he had retained the services of a lab in June
26 of '02 and at that point he was focused on the paint analysis.

27 He stated that he spoke with the prosecutor assigned to
28 the preliminary hearing. The prosecutor would not provide any

1 more discovery than had been provided. He would not provide any
2 bench notes. He was adamant about this. Mr. Thomas used the
3 words "soundly rebuffed" in his testimony when he stated that he
4 wanted to retest the paint.

5 He was told that requests -- that the request that he
6 had made far exceeded what he had a right to get for the
7 preliminary hearing. He felt that all of the -- and I'm quoting
8 now actually from testimony from Mr. Casey who was the prosecutor
9 at the preliminary hearing and testified to what I'm about to
10 say.

11 He felt that, and he testified just recently that:

12 "Mr. Thomas's request far exceeded what they
13 had a right to get for the preliminary hearing."

14 He felt that:

15 "All of the public defender's discovery
16 requests were premature and that we already gave them
17 beyond what they should have had; that they already had
18 the lab notes but the lab notes were just
19 conclusionary." That's all they had.

20 And the Court is going to explain later, but certainly
21 what was not provided were the bench notes that would have been
22 the basis for effective cross-examination at the preliminary
23 hearing.

24 There were emails that the Court has read, and I'm
25 referring now to Court's Exhibit 54, because I can talk a lot
26 about what these emails are about, but I think that you need to
27 hear them.

28 "Mr. Thomas, your investigator Mr. Johnson

1 seems a bit unclear as to what is covered by the
2 recently executed discovery authorization letter sent
3 to you by the district attorney's office. I trust that
4 this note will clarify any ambiguity perceived by the
5 defense.

6 The discovery authorization letter gives you
7 access to all the evidence in the above-noted matter
8 within the custody and/or control of the Sonoma County
9 Sheriff's Department. That is to say, you may view or
10 copy evidence upon making the appropriate arrangements
11 with the sheriff's department.

12 The discovery authorization letter has no
13 nexus to the defense informal request for certain items
14 pursuant to Penal Code section 1054 et seq. and dated
15 30 September 2002. This defense document seems, to say
16 the least, a bit premature. Penal Code section 1054 et
17 seq., as I'm sure you are well aware, speaks to the
18 trial aspect of the criminal justice system. One finds
19 in Penal Code section 1054 pre A unpren the essential
20 philosophy of the entire statute, quote, to promote the
21 ascertainment of truth in trials by requiring timely
22 pretrial discovery, unquote. It is of note that the
23 preliminary examination in the other above-noted matter
24 has not yet taken place. It will not take place for
25 another five weeks.

26 Putting aside the, quote, cart before the
27 horse, end quote, defense interpretation of Penal Code
28 1054 et seq, the People at the appropriate procedural

1 point in time will have a number of objections to the
2 items outlined in your document of 30 September 2002.

3 Finally, case law of California recognizes a
4 significant distinction between the discovery required
5 for the preliminary examination and that required for
6 trial.

7 Respectfully, James Patrick Casey, Deputy District
8 Attorney."

9 And this was sent to Mr. Thomas apparently on
10 October 9th.

11 Mr. Thomas emailed back on October 10th:

12 "Please provide me with citations to the case
13 law to which you refer in the last sentence of your
14 message. Thank you. Signed, Ande."

15 And a response was again made that same day from
16 Mr. Casey to Mr. Thomas that states:

17 "Mr. Thomas, it's called a law library, and
18 the activity that takes place therein is called legal
19 research.

20 Respectfully, James Patrick Casey, Deputy
21 District Attorney."

22 Mr. Tom Johnson, the public defender investigator, was
23 trying to set up a procedure to retest the paint and the
24 wallboard prior to the preliminary hearing. When that wasn't
25 forthcoming, Mr. Thomas filed a formal discovery motion which
26 this Court finds a necessity almost unheard of in this county.✓
27 The formal discovery motion included at item 12:

28 "Any and all notes pertaining to forensic

1 tests or analysis performed in the case including but
2 not limited to the bench notes relating to the analysis
3 of the paint found on the knife located at the murder
4 scene as well as the paint found in defendant's
5 residence."

6 Judge Daum heard the motion on October 30th, 2002, and
7 he issued a ruling. The Court is going to quote from that
8 transcript at page 16 starting at line 16:

9 "MR. THOMAS: That's all right, Your Honor.
10 I don't need to make a record on that.

11 With respect to item 12, it's been
12 represented, if I understand correctly, that all of the
13 bench notes and any other notes pertaining to any
14 forensic analysis, whether it be of the paint,
15 ballistics, or otherwise, are available at the
16 Department of Justice.

17 "THE COURT: Not my understanding from what's
18 been stated early per --

19 "MR. CASEY: Your Honor, as we said earlier,
20 they are available via the discovery authorization
21 letter, and one wonders why two weeks before the
22 preliminary hearing no attempt has been made to use
23 that discovery authorization letter to get these
24 various items?

25 "THE COURT: In any case, No. 12 I believe is
26 appropriate, and however those can be made available,
27 they ought to be. And the defense will have a chance
28 to consider them at least for some limited period of

1 time.

2 "MR. THOMAS: Is the Court ruling if they're
3 not available at the Department of Justice in the
4 fashion Mr. Casey suggests that they should be
5 provided?

6 "MR. CASEY: Your Honor --

7 "THE COURT: They should be provided in
8 whatever form they exist, that is, any and all notes
9 pertaining to forensic tests or analysis performed in
10 this case.

11 "MR. CASEY: Respectfully, is the Court
12 ordering the People to provide that? That is covered
13 by their authorization letter.

14 "THE COURT: Right. What's being ordered is
15 that those will be available to the defense and as has
16 already been indicated by Mr. Casey that they are now
17 available in whatever form through the DOJ. That would
18 be sufficient for the Court's purposes."

19 When Mr. Casey testified on this issue, he did not
20 recall a hearing on the discovery motion. He did not recall
21 receiving a discovery request from Mr. Thomas, and he did not
22 recall a discovery order from Judge Daum.

23 The Court notes that what was provided is reflected in
24 Court's Exhibit 66. It's entitled "Physical Evidence Examination
25 Report," and it's an additional report which the Court reviewed
26 here, and it appeared to be a summary. Certainly that can be
27 reviewed as necessary.

28 I'm going to talk for a few minutes about the bench

1 notes themselves.

2 Nobody is in dispute at this time that pages 1 through
3 39 didn't get provided to the public defender prior to the
4 preliminary hearing. Mr. Potts prepared what was provided. He
5 prepared two copies which were pages 40 and on. One set of
6 copies went to the DA. The other set went to the public
7 defender. He also authored a cover letter which we have been
8 calling in this proceeding the "Jim/Mike note." It appears, when
9 you look at it as a whole, that was probably the cover letter to
10 the bench notes forwarding on that he provided.

11 He stated in testimony that he had discussed with
12 Mr. Casey what he was sending. He stated that it's his memory
13 that -- or "his interpretation" was the words he used that the
14 public defender's office through Mr. Johnson had only requested
15 testing on the wallboard. He discussed this with Mr. Casey, and
16 in fact I'll talk later that Mr. Casey acknowledges this
17 conversation.

18 His memory, Mr. Potts's memory, was that he was told to
19 just send what they requested -- or only supply what they
20 specifically request. So he said it two different ways during
21 his testimony.

22 However, I want to read now some information from
23 Court's Exhibit 62 which is Mr. Potts's running chronology in his
24 file, and it's entitled "Verbal Communications."

25 On October 10th of '02 he states he got:

26 "A telephone call from Deputy DA James Casey.

27 I gave him preliminary results of the ID of CF27 and
28 CF55 to BB8. I asked him if he needed a preliminary

1 report tomorrow? He said no, do what I can. Do what I
2 can and get him a report in two weeks," which would
3 have been days before the preliminary hearing.

4 There's a date of October 30th, '02, another telephone
5 call with Mr. Casey.

6 "Defense will be asking for copies of Mike
7 Potts's notes on the knife. He approved release of any
8 notes that they asked for. I discussed my progress on
9 the cartridge cases and the bullets."

10 There's another note on October 30th of '02:

11 "Telephone call from Tom Johnson, Sonoma
12 County Public Defender's Office. Wanted a copy of the
13 notes on the paint."

14 The chronology then goes on on November 7th, '02.

15 "Telephone call from Brad Burke. He needs to
16 pick up the evidence for the preliminary hearing."

17 And on October 2nd of '02:

18 "Telephone call from Tom Johnson, Sonoma
19 County Public Defender's Office. Where are pages 1
20 through 39? I told him that his office only requested
21 the notes on pages covering the paint analysis so
22 that's what they were sent."

23 We know now that they didn't get all the paint analysis
24 notes. It's okay and not necessary to send the remainder of the
25 notes.

26 And as I'm looking at the chronology, these appear to
27 be telephone conversations perhaps with various people involved
28 at the lab. However, this is a chronology that's kept in the

1 file and would be available to anyone who was preparing a set of
2 notes to send out to either the DA or to the public defender.

3 Mr. Potts says he never talked to Mr. Casey about any
4 Court order on discovery, and he never saw one.

5 Mr. Casey testified that he was aware that the public
6 defender requested bench notes prior to the preliminary hearing.
7 He says Mr. Potts handled it by telephone. He does acknowledge a
8 conversation with Mr. Potts about bench notes and what the public
9 defender wanted. He authorized the release.

10 He stated:

11 "I'm assuming Potts told me what they
12 requested."

13 He could not recall if he reviewed what Mr. Potts
14 provided.

15 He acknowledged several conversations with Mr. Potts
16 prior to the preliminary hearing about the knife and paint
17 comparisons.

18 He doesn't remember a conversation with Mr. Potts
19 concerning the broken testing instrument.

20 He can't remember if bench notes were provided before
21 or after the preliminary hearing.

22 He did specifically remember about the case that there
23 were four layers of paint, different colors, and that they
24 matched.

25 He did not ask Mr. Potts if each layer was tested.

26 The Court notes that the significant bench notes that
27 were not transmitted to the public defender were pages 4, 5, 6,
28 7, 8 which not only show diagrams of the knife on pages 4 and 5

1 but actually testing results having to do with the knife.

2 I'm going to go now to what we've been referring to as
3 the "Jim/Mike note."

4 This note the Court is interpreting as a cover letter
5 to the bench notes that were provided to the district attorney
6 and to the public defender. It reminds Mr. Casey about the need,
7 in Mr. Potts's view, for an elemental analysis. This memo
8 advises the prosecution that all -- not all the bench notes were
9 provided. In fact, he says he only provided about a third of
10 them.

11 He reminded Mr. Casey that there were additional pages
12 that he hadn't sent, and I'm referring to Court's Exhibit 44, and
13 I probably should just read it for clarity.

14 It reads:

15 "Jim, enclosed is a copy of the lab notes
16 covering the analysis that was performed on the paint
17 found on the knife in the Grahlmann and Blore case
18 requested by the Public Defender.

19 These are only a third of the notes that I
20 have on this case. So, let me know if you want all the
21 notes now or as requested.

22 In addition, I left you a voice mail message
23 about doing the elemental analysis of the paint on the
24 knife that we previously talked about doing. Give me a
25 call and let me know what you want to do.

26 Mike Potts."

27 Mr. Casey testified that he didn't receive the memo,
28 not that he did not remember it, but that he did not receive the

1 memo.

2 The Court notes, however, that the memo must have been
3 in the district attorney's file because it was forwarded to
4 Dr. Clark Deeds by the district attorney's office as part of a
5 large packet.

6 Mr. Chris Reynolds, who is the investigator employed by
7 the defense in this case, discovered that memo, Court's Exhibit
8 44, during his interview with the psychologist.

9 Talking a little bit about this business about
10 elemental analysis.

11 Mr. Potts is clear on the stand that he talked to
12 Mr. Casey about the need for an elemental analysis, that he
13 needed that to complete the testing.

14 He stated at least recently on the record that both of
15 these examinations needed to be done, in other words, the FTIR
16 instrumental exam and the elemental analysis in order to have a
17 complete analysis.

18 He related that at the time that he first spoke that
19 his equipment needed to be repaired. He stated that he did talk
20 to Mr. Casey about the exams that he did which he characterized
21 as "exclusionary tests."

22 He said that he told Mr. Casey he wanted to do the
23 additional test, in fact he needed it, and he stated recently
24 under examination that ~~he~~ mentioned that more than once to
25 Mr. Casey.

26 Mr. Casey testified that he confirms that Mr. Potts
27 told him that there was a instrument that could do an elemental
28 analysis. He called it a "confirmatory test," and he knew that

1 prior to the prelim.

2 He stated that it's his memory that Mr. Potts told him
3 it was a new test that was not available at the time of the
4 murders.

5 He doesn't remember any conversation at all about
6 broken testing instruments.

7 He has no memory of Mr. Potts requesting to perform the
8 tests or that the test was needed to complete the analysis.

9 Mr. Casey testified that he had no interest in
10 discussing the test with Mr. Potts.

11 I'll talk for a few minutes about the research article
12 that we're now very familiar with.

13 Mr. Potts testified that Mr. Casey asked him to find
14 research with respect to paint analysis.

15 Mr. Potts testified that he was another -- let me start
16 over.

17 Mr. Potts testified that Mr. Casey asked him to find
18 the research on paint analysis. However, Mr. Davidson testified
19 that he spoke to Mr. Potts prior to the preliminary hearing and
20 prior to Mr. Casey being assigned to the case about the article.

21 No one disputes that Mr. Potts stated to everybody that
22 this was the only article on paint comparison in scientific
23 literature that he was able to find.

24 Mr. Potts stated on the stand that he did discuss this
25 article with Mr. Casey.

26 He stated that he told Mr. Casey that the study might
27 not be applicable to the Rutledge case.

28 He stated that he informed Mr. Casey that the paper did

1 not address chemical composition.

2 He stated that Mr. Casey knew that he had not done an
3 elemental analysis because that was the subject of the Jim/Mike
4 letter and of their conversations.

5 Mr. Potts stated that Mr. Casey did not indicate that
6 he did not understand when they discussed the testing procedures.

7 Mr. Potts was adamant on the stand that he warned
8 Mr. Casey of the inapplicability of the research article and that
9 he warned him of the pitfalls of the article.

10 Mr. Casey had a completely different view point about
11 this particular article. He stated that he didn't spend any time
12 with Mr. Potts prior to the testimony at the preliminary hearing
13 discussing what his scientific findings were; that this was a low
14 priority, which was discussing any of this with Mr. Potts was a
15 low priority.

16 Mr. Casey confirmed that he did read the article; that
17 Mr. Potts told him it was the only research that he could find,
18 but he, Mr. Casey, was adamant that he never was warned about the
19 applicability of the article; that he did not talk with Mr. Potts
20 about the application of the study to the current test; that he
21 did not discuss with Mr. Potts about what tests he did or did not
22 perform; that he stated during recent testimony that at the
23 preliminary hearing stage he had no desire to go into science;
24 and that he made no inquiry of Mr. Potts beyond the conclusionary
25 information in Mr. Potts's report.

26 He found that the article was a foundation for and
27 strong buttress of the tests done on the paint samples.

28 He viewed the article in a favorable light.

1 He stated that he did not discuss statistical findings
2 of the article with Mr. Potts, and he did not discuss
3 testimony -- well -- strike that.

4 There was some testimony from Detective Davidson where
5 he confirmed he had discussed this specific article with
6 Mr. Potts in advance of the preliminary hearing. They discussed
7 the statistical probabilities of the report, and Detective
8 Davidson stated that Mr. Potts told him that the article allowed
9 him to come to a scientific opinion which could be presented to
10 the preliminary hearing magistrate.

11 Detective Davidson also stated that Mr. Potts did
12 discuss the shortcomings of the article with him. They discussed
13 the extreme age of this scientific article being 40 plus years
14 and the fact that it came from a completely different country,
15 that it came from Europe, in fact, Wales.

16 The Court is going to discuss now Mr. Potts's
17 testimony.

18 Mr. Potts testified that the paint on the knife matches
19 the paint on the other two items not only in color but also layer
20 sequence and type of paint, and the chemical analysis on there is
21 the same as well.

22 When he was asked about what was examined, he testified
23 that we're talking about four separate layers and four different
24 colored layers as well.

25 When the subject of match came up, he testified that it
26 not only matches in color, in other words, the color of the paint
27 on the knife, but also the layer sequence, and the colors of each
28 of those layers is the same that appears on the knife, and the

1 chemical composition of the paint that was on the knife matches
2 the same chemical composition of each one of those layers.

3 With respect to the scientific study, he formed
4 conclusions which he represented to the Court in that if only one
5 layer matched, it would be a 250,000 to 1 match. However, in
6 this case he stated since all four layers matched between the
7 paint and the wallboard that it was a million to 1.

8 Since then Mr. Potts has produced what's become Court's
9 Exhibit 56, which is difficult for this Court to represent, but
10 perhaps you could represent it as affirmative misrepresentation.

11 I'll talk a little bit about the DA's duty to know his
12 evidence.

13 "The prosecution is presumed to know what the
14 police know. This extends to all agents who are
15 working on behalf of the prosecution."

16 That comes directly from Kyles vs. Whitley, 115 US
17 1555.

18 "The individual prosecutor is responsible for
19 prosecutorial discovery errors under the team concept
20 theory."

21 Talking about People vs. Robinson at 31 Cal.App.4th
22 494.

23 In this case the Court found that the prosecution's
24 burden to disclose extended to the raw notes of a fire
25 investigator. The prosecution was found to have constructive
26 possession of the notes.

27 In the case In Re Brown at 17 Cal.4th 873:

28 "The Court found that it was the district

1 attorney's duty to review lab files for exculpatory
2 evidence and that the crime lab's failure to advise the
3 district attorney of a worksheet did not relieve the DA
4 of the obligation to review the lab files."

5 It does appear from this case that the DA must
6 understand what he is reviewing because all of that information
7 is reputed to him.

8 The Merrill Court says, that's Merrill 27 Cal.App.4th
9 1586 at page 1594:

10 "Whether the failure was intentional or
11 negligent is irrelevant, its occurrence undermines the
12 public's confidence in the criminal justice system."

13 Quoting from Brown again at 17 Cal.4th 873:

14 "The individual prosecutor is presumed to
15 have knowledge of all information gathered in
16 connection with the government's case. This duty is
17 nondelegable at least to the extent that the prosecutor
18 remains responsible for any lapse in compliance."

19 And at page 883 of the Brown case:

20 "This obligation serves to justify trust in
21 the district attorney as, quote, the representative of
22 the sovereignty whose interest in a crime prosecution
23 is not that it shall win a case but that justice shall
24 be done."

25 That's quoting Kyles vs. Whitley, 514 US 419 at page
26 439.

27 Let's focus a little bit about what we're doing here.

28 Does the Brady case require disclosure prior to the

1 preliminary hearing? Well, yes, it does. Although no case
2 expressly states that Brady applies to discovery prior to a
3 preliminary hearing, California case law is clear that the
4 prosecutor's duty to disclose favorable evidence to the defendant
5 applies to prepreliminary hearing discovery.

6 In Merrill vs. Superior Court, 27 Cal.App.4th 1586, the
7 defendant claimed that she was denied a substantial preliminary
8 hearing right by the district attorney's nondisclosure of
9 material evidence.

10 The Merrill Court did not find any distinction between
11 nondisclosures before trial and nondisclosures before preliminary
12 hearing. The Court simply acknowledged that the prosecution has
13 a duty to disclose all substantial material evidence favorable to
14 an accused whether such evidence relates directly to guilt, to
15 matters relevant to punishment, or to credibility of a material
16 witness.

17 The Merrill Court cited People vs. Rutherford, 14
18 Cal.3d 399, and the Rutherford case was based upon the Brady
19 decision; therefore, it seems clear that a Brady violation may
20 occur if favorable material evidence is not disclosed prior to
21 the preliminary hearing.

22 This Court also cites Stanton vs. Superior Court, 193
23 Cal.App.3d 265 where the Court held that:

24 "The prosecution's failure to disclose
25 evidence material to defense cross-examination of
26 eyewitnesses at the preliminary hearing violates the
27 Rutherford rule and, therefore, the defendant was
28 entitled to have an element of the charged offense,

1 gross negligence, stricken from the record."

2 This Court now cites Currie, C-U-R-R-I-E, vs. Superior
3 Court at 230 Cal.App.3d 83. The defendant there filed a
4 nonstatutory motion to dismiss based upon the prosecution's
5 failure to disclose until long after the preliminary hearing that
6 he had charged the victim with a misdemeanor filing of a false
7 report and that the charge was pending at the time of the
8 preliminary hearing.

9 The Court found that the district attorney failed to
10 abide by its duty to provide evidence to defendant prior to the
11 preliminary hearing.

12 With respect to Brady violations prior to the
13 preliminary hearings, I'm going to go back to the Merrill Court,
14 Merrill vs. Superior Court, 27 Cal.App.4th at 1586. There the:

15 "Defendant was convicted of two murders
16 arising from an armed robbery. Prior to trial, a
17 codefendant admitted committing the crimes. A witness
18 positively identified the codefendant and another
19 witness saw two men near the crime scene but
20 emphatically denied the defendant was one of them.

21 The prosecution did not disclose to the
22 defense the second witness' statement. The second
23 witness did not testify at the preliminary hearing and,
24 interestingly, at least to this Court, at trial the
25 prosecution did not ask the second witness if defendant
26 was in fact one of the two men he'd seen on the day of
27 the crimes.

28 The defendant learned of the witness' refusal

1 to identify him not until after his conviction."

2 The Merrill Court found that the failure to disclose
3 violated Rutherford, violated Brady as the witness' refusal to
4 identify defendant as the perpetrator of this material evidence
5 beneficial to the defense.

6 As for the remedy, the Court held that:

7 "The Court should look to the materiality of
8 the nondisclosed information and what effect it should
9 have on the determination of probable cause.

10 If the Court finds that after weighing all
11 the evidence, which means that you weigh the evidence
12 presented at the prelim as well as the suppressed
13 evidence, there is a reasonable possibility that the
14 magistrate would not have found probable cause, the
15 remedy is dismissal."

16 The Merrill Court ruled that:

17 "The trial court properly performed this
18 weighing process and did not abuse its discretion when
19 it ruled that the exculpatory value of the evidence in
20 that case was outweighed by any incriminating evidence
21 against the defendant."

22 In Stanton at 193 Cal.App.3d 265:

23 "The defendant was prosecuted for a vehicular
24 manslaughter with gross negligence. The prosecution
25 failed to disclose an investigative report from a civil
26 attorney hired by decedent's family, and the civil
27 attorney had summaries of interviews with three
28 eyewitnesses. Those were available prior to the

1 preliminary hearing.

2 The investigative reports contained
3 statements by eyewitnesses that were inconsistent with
4 statements provided to the district attorney's office
5 and which were testified to at the preliminary
6 hearing."

7 The Stanton Court found that:

8 "This suppressed evidence cast doubt on the
9 credibility of the witnesses' testimony at the
10 preliminary hearing, and the defendant was denied a
11 substantial right by the prosecution's failure to
12 disclose the report."

13 This Court is also mindful of Kyles vs. Whitley at page
14 49 where that Court states, quote:

15 "The cumulative effect of all withheld
16 evidence that is favorable to the defendant is
17 considered rather than individually considering each
18 item of evidence."

19 I want to direct myself now to the issue of
20 cross-examination and substantial right. There is a CEB book
21 that I think everyone in this area of the law uses in criminal
22 law to prepare procedure and practice, and I'm talking now about
23 information provided on page 600. They state in that treatise
24 that:

25 "Not every restriction of cross-examination
26 is considered a denial of a substantial right
27 sufficient to merit dismissal under a 995 motion."

28 They state that:

1 "The difference between a minor error and the
2 denial of a substantial right has generated
3 litigation," but their theory is that the general
4 guideline is that "when the subject of defendant's
5 counsel's cross-examination concerns the allegations in
6 the complaint and is aimed at establishing an
7 affirmative defense or defeating the prosecution's
8 case, a substantial right is violated."

9 With respect to cross-examination, Alford, A-L-F-O-R-D,
10 vs. US at 282 US 687 states at page 727:

11 "Cross-examination of a witness is a matter
12 of right."

13 Stated at 728:

14 "Denial of a substantial right --"

15 Well, it's stating that:

16 "Effective cross-examination is a safeguard
17 essential to a fair trial."

18 They go on to state in that case at page 728:

19 "Some principles should apply to preliminary
20 hearings. Defendant is entitled to present evidence at
21 such hearings to establish that there is no probable
22 cause to hold him for trial and probable cause may be
23 dismissed by testimony elicited under cross-examination
24 as well as by direct testimony."

25 "Denial of a substantial right." What does that mean?

26 In People vs. Mackey at 176 Cal.App.3d 177:

27 "The DA failed to disclose a statement from
28 key witnesses in spite of a discovery order compelling

1 disclosure of all witness' statements. Failure to
2 disclose was a denial of a substantial right."

3 They went on to state at page 270:

4 "It is well settled that a denial of a
5 substantial right at the preliminary hearing renders
6 the ensuing commitment illegal and entitled the
7 defendant to dismissal of the information on timely
8 motion."

9 And at page 271, also citing Mackey, at page 185:

10 "Denial of cross-examination is a deprivation
11 of a substantial right rendering the holding order
12 unlawful."

13 They continue on on page 271 with some interesting
14 language that states:

15 "-- undisclosed report containing exculpatory
16 evidence on the focal issue before the magistrate and
17 would have served the dual purpose in impeaching the
18 district attorney's case and establishing an
19 affirmative defense on gross negligence and that the
20 defense unquestionably was handicapped by the
21 prosecutorial error of not providing the information."

22 Onto credibility of witnesses.

23 People vs. Phillips, 41 Cal.3d 29 at page 46 states:

24 "The duty to disclose all substantial
25 material evidence favorable to an accused includes
26 evidence relating to the credibility of a witness."

27 And at page 47:

28 "Again, despite his knowledge of the witness'

1 misleading answer, the DA remained silent and failed to
2 correct the testimony."

3 That's citing Moreland, People vs. West Moreland, 1538
4 Cal.App.2d 1532, which I'm concerned here.

5 People vs. Morris says at 46 Cal.3d 1 at page 30:

6 "The duty to disclose evidence favorable to
7 the accused extends to evidence which may reflect on
8 the credibility of a material witness."

9 And that also cites People vs. Rutherford, which I
10 talked about before, at page 406.

11 People vs. Phillips at 41 Cal.3d page 46, states:

12 "Nondisclosure was compounded by the district
13 attorney's affirmative misrepresentation."

14 I'm not sure that we go that far here.

15 Now I'm going to speak a little bit about what I
16 categorize as "false evidence." In other words, that's the way
17 that it's spoken of in cases. And the specific case I'm quoting
18 now is In Re Roberts. It's a 2003 case at 29 Cal.4th 726 at page
19 742. It states that:

20 "False evidence is substantial, material, or
21 probative if there is a reasonable probability that had
22 it not been introduced, the result would have been
23 different."

24 And the Roberts Court is citing In Re Sassounian,
25 S-A-S-S-O-U-N-I-A-N, 9 Cal.4th 535 at page 436 which is a case
26 that if you read in this area at all, everybody cites that case.

27 The Roberts case at page 742 also says:

28 "The requisite reasonable probability is a

1 chance great enough under the totality of the
2 circumstances to underline our confidence in the
3 outcome. And the petitioner, the defendant, is not
4 required to show that the prosecution knew or should
5 have known that the testimony was false in order for it
6 to be considered false evidence."

7 That is Roberts citing People vs. Marshall, a 1996 case
8 at 13 Cal.4th 799 at page 830.

9 So what's the process? I'm going to quote Brown now,
10 17 Cal.4th 873:

11 "While tendency and force of undisclosed
12 evidence is evaluated item by item, its cumulative
13 effect for purposes of materiality must be considered
14 collectively. And the reviewing Court may consider
15 directly any adverse effect that the prosecution's
16 failure might have had on the preparation or
17 presentation of defendant's case."

18 Stanton at page 1594 requires the reviewing Court to
19 add the nondisclosed information to the evidence which the
20 magistrate heard and then retest the sum for probable cause.

21 Merrill at page 1596, you have to include then reweigh,
22 not exclude and reweigh.

23 Merrill at 1597 noted that the trial court's
24 responsibility was extremely difficult having to reweigh the
25 evidence at the preliminary hearing after having heard the full
26 trial yet was barred from considering any of the trial evidence.
27 Quote:

28 "It is the trial court's responsibility to

1 accord weight and then to balance the relative
2 importance of the testimony.

3 When weighing, the Court may not overlook
4 exculpatory evidence nor consider incriminating
5 evidence from any source or the preliminary hearing,"
6 which is also required by the Stanton Court.

7 This Court again last night went back and reread the
8 preliminary hearing transcript. So this is a two-day preliminary
9 hearing which took place on Thursday, November 4th, 2002, and it
10 also took place on November 15th, 2002. A lot of people
11 testified.

12 Detective Davidson testified quite extensively. In
13 fact, his testimony takes up the first volume.

14 The Court again read the testimony of Charles Markum,
15 Debra Becker, Otto Meyer, William McMahon, Greg Adair, Spencer
16 Tomasvary.

17 The Court reread the testimony of Steven Brown, who is
18 an employee of the sheriff's department, James Larry Lewis, Jr.,
19 Michael Potts, Bradford Burke, John Yount, Dre Allen Buetow, and
20 Russell Davidson.

21 With respect to Debra Becker, the Court was struck with
22 how unsure she was about when exactly she sold ammunition to
23 Mr. Rutledge. In fact, she times her memory around certain
24 events in her life that were never nailed down by testimony which
25 had to do with the lights going off in Guerneville. That
26 probably could have been found out, but it wasn't; timing to do
27 with some family member came to visit; and she also made some
28 statements that I thought were interesting, though. When shown

1 the sheath to the knife, she didn't recognize the sheath. In
2 fact she said, "No, it's a brown sheath. Wrong color."

3 When she was questioned at one point, I guess the
4 defendant came in without his sheath and knife on:

5 "Did you ever ask him if he lost his knife?"

6 She says:

7 "Well, I think I did."

8 But later on, I think in probably cross, she said:

9 "I don't remember what he said."

10 Then there's a real problem nailing down her testimony
11 with respect to when she actually met Mr. Rutledge, and I'm
12 unclear as to that after reading the totality of her testimony.

13 She does say that she began working at Kings in either
14 April or May of '98 and that she might have met the defendant
15 after that, but I'm -- I'm not sure that that's really the year
16 that she began employment there.

17 When you look at just the testimony that's presented,
18 it says that Mr. Rutledge continued to come into the store. In
19 fact, he was there a lot. When he came into the store, he went
20 and looked at knives. He also went and looked at knives even if
21 he was interested in something else.

22 All right. He looked at knives, and he kept coming in
23 even after Detective Davidson talked to her.

24 With respect to Greg Adair, he says:

25 "Well, he's a friend of mine since junior
26 high, but we've grown apart. Haven't seen him in the
27 last couple of years. Certainly didn't target shoot
28 with Zach."

1 Then he starts talking about this SKS rifle that he had
2 had in his closet. He says:

3 "Well, I know before the murders that the
4 rifle was stolen, and I thought I know who did it, and
5 so I --"

6 At first he testifies that he went and got it.

7 "I went and got it and I confronted Zach."

8 Well, if he went and got it, why did he testify later
9 that it just suddenly reappeared in his closet? And then he
10 testified to that:

11 "No, I didn't see anyone actually take it,
12 and, no, I didn't see anyone actually return it."

13 So my question as I'm reading this is when he went to
14 confront the defendant, why didn't he just take back the rifle?

15 The testimony is not very compelling when I'm doing my
16 weighing process compounded with the fact that he had felony
17 charges dismissed about all of this time -- during this time in
18 response to his turning over that SKS rifle and perhaps
19 testifying. That also was unclear with respect to the
20 transcript.

21 With respect to Spencer Tomasvary, he says:

22 "Well, I've known Zach for most of my life."

23 When he's asked:

24 "Did you and Zach and Dre Buetow go out
25 together?"

26 "I don't really remember."

27 Looks like he wasn't interviewed for two years after
28 the murders.

1 He says:

2 "Yeah, we all went out. I went out with the
3 defendant, but I don't think very often."

4 He confirms that what he told Detective Davidson was as
5 he remembered it at the time that he told him, but at the time of
6 this hearing he didn't remember much of anything as to what
7 happened although he did state he didn't know Dre Buetow very
8 well, but he did know him and evidently partied with him.

9 With respect to James Larry Davis, Jr., he says:

10 "Yeah, I've known the defendant for eight to
11 ten years. In fact, I lived around the corner."

12 And he says:

13 "He called me up one time and he says, well,
14 Jason punched him in a bar and he wanted to come over."

15 But on cross-examination when -- well, on direct he
16 implies that it was pretty close to when the murders took place,
17 but then on cross he says:

18 "Well, it could have been two years before
19 that."

20 He says, well, at one point the defendant let him
21 borrow a knife, but he says later:

22 "A lot of people in Guerneville sell those
23 knives just like that."

24 The defendant may have asked him if he wanted to go
25 hunting one time.

26 But a conversation that I found the most interesting
27 which is when asked to identify the knife he at first says that
28 he could identify it but later on during cross-examination he

1 starts talking about a bone-handled knife. So when questioned
2 further, and this is pretty confusing but I'm looking at the
3 record the way it is, he confirms the defendant only had one
4 knife and that at the conclusion of the testimony, I'm not sure
5 whether it was a bone-handled knife that he said that he only
6 wore one or whether or not it was a wood-handled knife that he
7 looked at in court, and it looks like he didn't know either. But
8 he only carried one knife.

9 Then we have a paper that he signed at the coffee
10 bazaar with Mr. Thomas where he signed a piece of paper that said
11 that Zach never told him that a Jason beat him up. And it was
12 confirmed on cross that, yes, he did read the paper that was
13 written out by Mr. Thomas before he signed it and was probably
14 right at the time that he signed it.

15 Then we have Mr. Dre Buetow who confirmed that he could
16 have been at some party sometime with all -- with Zach and with
17 Mr. Tomasvary. He doesn't remember all three of them going out,
18 but he did lead an active social life. He was in Guerneville
19 every weekend, and both of them were in the same circle of
20 friends that he hung out with.

21 So I've reread all of that. And upon weighing all the
22 evidence, the evidence produced at the preliminary hearing and
23 considering the undisclosed evidence and the effect of the
24 undisclosed evidence and the effect of the testimony of
25 Mr. Potts, this Court finds that there is a reasonable
26 probability that the magistrate would not have found probable
27 cause.

28 The Court finds that the exculpatory value of the

1 *
2 suppressed evidence outweighs the possible incriminating evidence/
3 presented against the defendant at the preliminary hearing.

4 But during one of the arguments that Mr. Nick made that
5 this Court finds compelling, it's not only what wasn't produced,
6 it's what was produced.

7 I think there's sufficient reason for this Court to
8 turn over the preliminary hearing based upon what was not
9 produced, but I'm more concerned about what was produced, and the
10 effect of having this marginal testimony remaining and the effect
11 of Mr. Potts's statement that based upon all of his analysis it
12 was a million to 1 that all of these layers matched. It had to
13 have had an unbelievable -- well, completely believable effect
14 upon the magistrate, and it completely outweighs the rest of this
15 evidence so the Court is granting the motion.

16 MR. JACOBS: Thank you, Your Honor. We have nothing
17 further.

18 MR. NICK: Your Honor, I ask that the Court order the
19 defendant released forthwith.

20 THE COURT: He's released.

21 MR. JACOBS: What -- do you want to know for the record
22 we will be refiling. I mean, it's -- it doesn't matter, I'm
23 just -- he knows.

24 THE COURT: Well, if you were to tell me you're going
25 to refile tomorrow, I can listen to that, but I haven't heard
26 that.

27 MR. JACOBS: Well, we do intend to refile.

28 THE COURT: Okay.

MR. NICK: Well, Your Honor --

1 **THE COURT:** I don't have any authority to hold him in
2 custody.

3 **MR. JACOBS:** I understand.

4 **THE COURT:** So he is released, and I'm hopeful that
5 you'll be in conversation with Mr. Nick so there can be some
6 arrangement for him to turn himself in at the appropriate time.

7 **MR. JACOBS:** We --

8 **MS. COOK:** We don't believe that he'll be released. We
9 think that the procedures will take place this afternoon.

10 **THE COURT:** Okay. I didn't know that. All right.

11 **MS. COOK:** Thank you.

12 **MR. NICK:** Well, Your Honor, wait a second.

13 **MS. COOK:** When a case is dismissed on one day and
14 refiled the next --

15 **MR. NICK:** Your Honor, there's an order from the Court
16 that defendant be released forthwith.

17 **MS. COOK:** On this case, correct.

18 **MR. NICK:** The sheriff's department doesn't have
19 authority to ignore that order. So if they're going to go
20 through the process of refileing a complaint, they need to do it
21 here and now, otherwise, they can rearrest the defendant at a
22 time when their office makes a decision that that has occurred.
23 The defendant just can't sit there in jail while they determine
24 what to do.

25 **MS. COOK:** This happens in a daily basis, and I'm sure
26 that Your Honor is aware of that. What will happen is the
27 sheriff will begin processing the defendant on the current
28 dismissal. In the meantime, our office will generate the

1 appropriate paperwork unrelated to this case.

2 **THE COURT:** I think it's a timing case, Mr. Nick. If
3 the paperwork gets there before the defendant is released, he
4 will be held on the new paper. The procedure that happens in the
5 jail will be up to the agencies.

6 **MS. COOK:** We state it for the Court and counsel's
7 benefit.

8 **THE COURT:** And if that's going to be the case, I'd
9 like to talk to counsel about the next step. Perhaps we can go
10 into chambers for a few minutes.

11 **MR. NICK:** Yes, Your Honor, I would like to.

12 (OFF THE RECORD BENCH CONFERENCE)

13 (OFF THE RECORD)

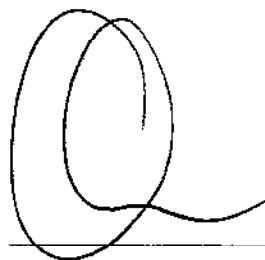
1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SONOMA)
4

5
6 CERTIFICATE OF REPORTER

7 I, CARLOS A. MARTINEZ, a Certified Shorthand Reporter
8 of the State of California, do hereby certify that the foregoing
9 pages, numbered 1 to 36, inclusive, are a true and correct
10 transcription of my shorthand notes taken on June 14, 2004, in
11 the matter entitled THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff, versus ZACHARIAH RUTLEDGE, Defendant, No. SCR-32528,
13 in the criminal files of the Superior Court of California, County
14 of Sonoma.

15
16
17 Dated this 28th day of June, 2004.
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19

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28



CARLOS A. MARTINEZ
Certified Shorthand Reporter #10620

Exhibit 11

SPEC: CRIMINALIST
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

CRIMINALIST Series Specification (Established May 28, 1972)

SCOPE

This series specification describes four Criminalist classes used by the Department of Justice. These classes are used for positions that conduct, supervise and provide training in connection with complex technical laboratory analyses with respect to the identification of criminals and investigation of crimes.

Schem Code	Class Code	Class
VF30	8466	Criminalist
VF20	8478	Senior Criminalist
VF10	8477	Criminalist Supervisor
VF08	8467	Criminalist Manager

DEFINITION OF SERIES

Criminalists conduct examinations of crime scenes for physical evidence, and in complex cases make all types of chemical analyses such as alcohol determinations, toxicological analyses of foods and body viscera and fluids; test for drugs and explosives, and various types of microchemical tests; make the difficult microscopic, chemical, and serological tests on blood and other physiological fluid stains; identify and compare hair, fibers, soil, paint, glass, building materials and other substances in forensic cases; make visual, microscopic and other technical examinations and comparisons of tool marks, firearms and other weapons, bullets, cartridge cases and ammunition; make casts; make and develop photographs and photomicrographs using black and white and color films; use complex measuring, recording and testing instruments and devices; prepare evidence and exhibits and testify in court as expert witnesses; assist local law enforcement officers and prosecutors in analyzing and interpreting evidence; write reports and correspondence; give instruction in this field at peace officer training schools; and provide forensic research, application, advanced casework,

methodology development, and training to State and/or local forensic scientists and law enforcement agencies.

DEFINITION OF LEVELS

CRIMINALIST

This is the entry, training and subjourney level for the series. Under general direction, Criminalists will perform routine and less complex technical laboratory analyses and assist higher level Criminalists in the examination of crime scenes and in the scientific investigation of crimes.

SENIOR CRIMINALIST

This is the full journey level of the series. Incumbents are assigned to the more complex Criminalist analyses. They may act as leadpersons to coordinate the work of lower level Criminalists. Incumbents may also be assigned to provide training, application, methodology development, and research related to the field of criminalistics.

CRIMINALIST SUPERVISOR

This is the working supervisor level where incumbents are responsible for directing the work of a minimum of four Criminalists and/or laboratory technicians/assistants within: (1) a field office engaged in various criminalistic disciplines, (2) the California Criminalistic Institute engaged in organizing and providing forensic research, application, advanced casework, training and methodology development in one specialized criminalistic discipline, or (3) a forensic laboratory engaged in independent research as well as the design and direction of complex research projects and training programs. Staff at this level may also be assigned the most difficult advanced forensic casework and courtroom testimony with wide discretion and independence of action.

CRIMINALIST MANAGER

Plans, organizes and directs the criminalistic program in an assigned area of the State. Incumbents at this level must supervise two or more Criminalist Supervisors. May also direct complex and sensitive forensic science projects which have a significant impact on the Bureau or the field of criminalistics.

MINIMUM QUALIFICATIONS

CRIMINALIST

Education: Equivalent to graduation from college with a major in one of the physical or biological sciences, including the equivalent of eight semester hours of general chemistry and three semester hours of quantitative analysis. Registration as a senior in a recognized institution will admit applicants to the examination but they must produce proof of graduation or its equivalent before they are eligible for appointment. Candidates who have graduated from college with a major in one of the physical or biological sciences, including the eight semester hours of general chemistry, but do not possess the three semester hours of quantitative analysis will be admitted to the examination, but they must produce proof of completion of the three semester hours of quantitative analysis before they are eligible for appointment.

SENIOR CRIMINALIST

Either I

Two years of experience in the California state service performing the duties of a Criminalist, Range C.

Or II

Experience: Four years of professional experience beyond the trainee level in a physical or biological science laboratory setting performing the duties of a chemist, biochemist or a related position. This experience must have included at least two years as a Criminalist having independent responsibility for making quantitative and qualitative analyses. (One year of postgraduate education in one of the physical or biological sciences may be substituted for one year of the required general experience.) Experience in California state service applied toward this requirement must include at least two years performing the duties of a Criminalist, Range C. and

Education: Equivalent to graduation from college with a major in one of the physical or biological sciences, including the equivalent of eight semester hours of general chemistry and three semester hours of quantitative analysis.

Or III

Experience: Four years of professional experience in a physical or biological science laboratory setting performing independent research related to Forensic Science. (Possession of a master's degree in a physical or biological science may be substituted for one year of experience and possession of a Ph.D. in a physical or biological

science for two years of the required experience.) Experience in California state service applied toward this requirement must include at least two years performing the duties of a Criminalist, Range C. and

Education: Equivalent to graduation from college with a major in one of the physical or biological sciences, including the equivalent of eight semester hours of general chemistry and three semester hours of quantitative analysis.

CRIMINALIST SUPERVISOR

Either I

One year of experience in the California state service performing the duties of a Senior Criminalist.

Or II

Experience: Broad and extensive (more than five years) of professional experience in a physical or biological science laboratory setting performing the duties of a chemist, biochemist or a related position. (One year of postgraduate education in one of the physical or biological sciences may be substituted for one year of the required general experience.) Experience in California state service applied toward this requirement must include at least one year performing the duties of a Senior Criminalist. and

Education: Equivalent to graduation from college with a major in one of the physical or biological sciences, including the equivalent of eight semester hours of general chemistry and three semester hours of quantitative analysis.

Or III

Experience: Broad and extensive (more than five years) of professional experience in a physical or biological science laboratory setting performing independent research related to Forensic Science. (Possession of a master's degree in a physical or biological science may be substituted for one year of experience and possession of a Ph.D. in a physical or biological science may be substituted for two years of the required experience.) Experience in California state service applied toward this requirement must include at least one year performing the duties of a Senior Criminalist. and

Education: Equivalent to graduation from college with a major in one of the physical or biological sciences, including the equivalent of eight semester hours of general chemistry.

CRIMINALIST MANAGER

Either I

One year of experience in the California state service performing the duties of a Criminalist Supervisor.

Or II

Experience: Broad and extensive (more than five years) of professional experience in a physical or biological science laboratory setting performing the duties of a chemist, biochemist or a related position. This experience must have included at least two years as a supervising criminalist. (One year of postgraduate education in one of the physical or biological sciences may be substituted for one year of the required general experience.)

Experience in California state service applied toward this requirement must include at least one year performing the duties of Criminalist Supervisor. and

Education: Equivalent to graduation from college with a major in one of the physical or biological sciences, including the equivalent of eight semester hours of general chemistry and three semester hours of quantitative analysis.

Or III

Experience: Broad and extensive (more than five years) of professional experience in a physical or biological science laboratory setting performing independent research related to Forensic Science. This experience must have included at least two years in the design and direction of scientific research. This experience must also have included at least two years of supervision. (Possession of a master's degree in a physical or biological science may be substituted for one year of general experience and possession of a Ph.D. in a physical or biological science may be substituted for two years of the required general experience.) Experience in California state service applied to this requirement must include at least one year performing the duties of a Criminalist Supervisor. and

Education: Equivalent to graduation from college with a major in one of the physical or biological sciences, including the equivalent of eight semester hours of general chemistry.

KNOWLEDGE AND ABILITIES

ALL LEVELS:

Knowledge of: Scientific methods and techniques used in examining crime scenes; tests for the identity and comparison of blood and physiological fluids; tests for explosives and flammable materials; toxicological analyses; tests of hair and fibers, glass, soil, paint and similar materials, and equipment necessary to conduct these

tests; modern methods and techniques in investigations of major crimes; current trends in toxicology, general chemistry and microchemistry; modern types of small arms and the techniques of conducting all types of firearms, bullet, and tool mark comparisons; methods used in the examination of documents in criminal cases; photographic and photomicrographic principles and practices as applied to Criminalists; chromatographic techniques.

Ability to: Make extensive use of scientific methods and techniques at the scene of a crime; make effective use of microscopes, spectrograph, infrared and ultra-violet spectrophotometer, and gas chromatograph; use micro methods for determining physical constants such as refractive index and density; recognize the need for and develop and evaluate new test methods and procedures; analyze situations accurately and take effective action; conduct applied research to develop and validate state-of-the-art evidence examination techniques; testify effectively in court; instruct law enforcement and forensic personnel in criminalistics; prepare course outlines and lesson plans which will satisfy the requirements set forth by the Commission on Peace Officers' Standards and Training (POST).

CRIMINALIST SUPERVISOR CRIMINALIST MANAGER

Knowledge of: Department's Affirmative Action Program objectives; a manager's role in the Affirmative Action Program and the processes available to meet affirmative action objectives.

Ability to: Effectively contribute to the Department's affirmative action objectives.

DRUG TESTING REQUIREMENT

Applicants for positions in this class series are required to pass a drug screening test.

SPECIAL PERSONAL CHARACTERISTICS

ALL LEVELS:

Tact, patience, and keenness of observation.

CLASS HISTORY

Class	Date Established	Date Revised	Title Changed
Criminalist	2/28/89	1/12/93	--
Senior Criminalist	4/19/72	1/12/93	2/28/89
Criminalist Supervisor	2/6/64	1/12/93	2/28/89
Criminalist Manager	6/28/72	1/12/93	2/28/89